

REVISED LAWS OF
MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
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CHAPTER 82.

ACTIONS RELATING TO REAL PROPERTY.

GENERAL PROVISIONS.

4388. Actions against unknown heirs.

Opening tlefault.—In an action against unknown heirs and parties to determine adverse claims, the court did not err in granting a motion of the heirs for leave to answer and defend after judgment entered by default on service of summons by publication only. *Fink v. Woods*, 102 Minn. 374, 113 N. W. 909.

4389. Notice of lis pendens.—In all actions in which the title to, or any interest in or lien upon, real property is involved or affected, or is brought in question by either party, any party thereto, at the time of filing the complaint, or at any time thereafter during the pendency of such action, may file for record with the register of deeds of each county in which any part of the premises lies a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in such county involved, affected, or brought in question thereby. From the time of the filing of such notice, and from such time only, the pendency of the action shall be notice to purchasers and incumbrancers of the rights and equities of the party filing the same to the premises. When any pleading is amended in such action so as to alter the description of, or to extend the claim against, the premises affected, a new notice may be filed, with like effect. Such notice shall be recorded in the same book and in the same manner in which mortgages are recorded, and may be discharged by an entry to that effect in the margin of the record by the party filing the same, or his attorney, in the presence of the register, or by a writing executed and acknowledged in the manner of a conveyance, whereupon the register shall enter a minute thereof on the margin of such record. Provided, however, that the filing of such lis pendens at the time of filing the complaint and before the commencement of the action shall have no force, effect, or validity against the premises described in said lis pendens, unless the filing of the complaint is followed by the service of the summons in the action within ninety days after the filing of the complaint therein. (R. L. § 4389, as amended by Laws 1907, c. 332, § 1.)

Persons affected—Vendee under unrecorded contract.—A vendee under an unrecorded contract for the sale of lands entitling him to possession, who has paid part of the price before the filing of notice, is not injuriously affected thereby. When, however, he comes to pay the balance, he has legal knowledge of the lis pendens and may protect himself against paying to the wrong person, or, if the vendor seeks to enforce the contract, may rescind in case the vendor cannot give title as agreed. *Moulton v. Kolodzik*, 97 Minn. 426, 107 N. W. 154.

4391. Transfer of title by judgment.

Cited in *Sache v. Wallace*, 101 Minn. 169, 112 N. W. 386, 11 L. R. A. (N. S.) 803, 118 Am. St. Rep. 612.

ACTIONS FOR PARTITION.

4392. Action for partition or sale, who may bring.

Waiver of right.—The right of partition may be waived or suspended for a limited period by agreement of the parties in interest. *Roberts v. Wallace*, 100 Minn. 359, 111 N. W. 289, 117 Am. St. Rep. 701.

ACTIONS TO TRY TITLE.

4424. Action to determine adverse claims.

Who may maintain action.—The owner of a St. Paul city assessment certificate upon vacant land, upon which notice of expiration of redemption had been given, but who was not entitled to and had not received a deed because of failure to pay subsequent assessments, could not maintain an action to determine adverse claims against the owner of the fee. *Coffman v. London & Northwest American Mortg. Co.*, 98 Minn. 416, 108 N. W. 840; *Pieper v. Maclaren*, 99 Minn. 513, 108 N. W. 1118.

Possession.—A tenant of buildings on land held under a lease by another does not, by accepting a lease of the land from a stranger before expiration of his lease, without consent of his landlord or the lessee, place the stranger in possession so as to enable him to maintain an action to quiet title. *Trimble v. Lake Superior & Puget Sound Co.*, 99 Minn. 11, 108 N. W. 867.

Judgment—Eviction.—A judgment, in an action to determine adverse claims, adjudging that defendant, by virtue of a paramount title, is owner in fee simple and in possession, and that plaintiff has no title or interest, is evidence of a constructive eviction of plaintiff. *Larson v. Goettl*, 103 Minn. 272, 114 N. W. 840.

—**On default.**—A judgment awarding relief beyond the prayer of the complaint or scope of its allegations, the excessive relief appearing from the face of the record, is void. *Sache v. Wallace*, 101 Minn. 169, 112 N. W. 386, 11 L. R. A. (N. S.) 803, 118 Am. St. Rep. 612.

See note under section 4264.

4430. Second trial in ejectment.

Cited in *Cohues v. Finholt*, 101 Minn. 180, 112 N. W. 12.

To what actions applicable.—This section does not apply to an action under section 4454 to establish a boundary line. *Tierney v. Gondreau*, 99 Minn. 421, 109 N. W. 821.

This section does not apply to an action by the owner of a water power against the owner of a lower one to abate so much of his dam as caused the water to flow back upon the plaintiff's mill privileges, and to enjoin the maintenance of the defendant's dam at such a level as to turn water back into the plaintiff's tail-race and onto his mill wheel. *Tew v. Webster*, 106 Minn. 185, 118 N. W. 554.

This section applies only to actions where one party is in possession and judgment dispossessing him is sought by the other. It does not apply to actions involving rights in vacant and unoccupied land. *Buffalo Land & Exploration Co. v. Strong*, 101 Minn. 27, 111 N. W. 728.

—**Estoppel.**—Neither acceptance by the prevailing party of costs and disbursements awarded by the judgment, nor delay in moving to dismiss and strike from the files the demand for a second trial, will estop him from questioning the right of his adversary to a second trial. *Buffalo Land & Exploration Co. v. Strong*, 101 Minn. 27, 111 N. W. 728.

4431. Judgment on second trial—Restitution.

Cited in *Cohues v. Finholt*, 101 Minn. 180, 112 N. W. 12.

New trial—Extent.—A second trial in ejectment, extends to all questions presented pertinent to the title and right of possession, including damages for use and occupancy. *Sammons v. Pike*, 105 Minn. 106, 117 N. W. 244.

—**Costs and damages.**—This section entitles defendant in ejectment, who has paid the damages and costs awarded against him and thus obtained a second trial, to a return of the amount so paid, if he succeeds on a second trial, or the action be voluntarily dismissed. *Sammons v. Pike*, 105 Minn. 106, 117 N. W. 244.

4442. Notice to terminate contract of sale.—When default is made in the conditions of any contract for the conveyance of real estate, or any interest therein, whereby the vendor or his successor in interest has a right to terminate the same, he may do so by serving upon the purchaser, his personal representatives, adult heirs or assigns, a notice specifying the conditions in which default has been made, and stating that such contract will terminate thirty days after the service of such notice unless prior thereto the purchaser shall comply with such conditions and pay the costs of service. Such notice must be given notwithstanding any provisions in the contract to the contrary, and shall be served in the same manner as a summons in the district court. If the person to be served is not a resident of the state, or cannot be found therein, of which facts

the return of the sheriff of the county where the real estate lies that he cannot be found in such county shall be prima facie evidence, service may be made by three weeks' published notice. If within the time mentioned the person served complies with such conditions and pays the costs of service, the contract shall be thereby reinstated, but otherwise shall terminate. A copy of the notice, with the proof of service thereof and an affidavit of the vendor or his successor in interest or that of his agent or attorney showing that the purchaser has not complied with the terms of the notice, may be recorded with the register of deeds, and shall be prima facie evidence of the facts therein stated. Provided, that this act shall not be construed so as to apply to contracts for lands situated in another state or foreign country. (R. L. § 4442, as amended by Laws 1909, c. 355, § 1.)

Necessity of notice.—The contract not having been terminated by notice under Laws 1897, c. 223, and time not having been made the essence, the purchaser was entitled to specific performance, although payments had not been made within the time limited. *Libby v. Parry*, 98 Minn. 366, 108 N. W. 299.

Where a contract for the purchase of land in Colorado was executed, and payments thereunder were to be made in Minnesota, although it provided that the contract should be void upon default in making the payments at the stipulated time, Laws 1897, c. 223, requiring notice, applied. *Finnes v. Selover, Bates & Co.*, 102 Minn. 334, 113 N. W. 883.

Laws 1897, c. 223, cited in *Howe v. Coates*, 97 Minn. 385, 107 N. W. 397, 4 L. R. A. (N. S.) 1170, 114 Am. St. Rep. 723.

MISCELLANEOUS ACTIONS.

[4446—]1. **Fence, etc., when nuisance.**—Any fence, or any other structure, maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property shall be deemed a private nuisance. ('07 c. 387 § 1)

Historical.—"An act in relation to fences and other structures erected for the purpose of annoying the owners or occupants of adjoining property, and for the abatement of the same as nuisances." Approved April 24, 1907.

[4446—]2. **Same—Remedies.**—Any such owner or occupant injured, either in his comfort or in the enjoyment of his estate by such fence, or any other structure, may have an action of tort for the damage sustained thereby and may have such nuisance abated. ('07 c. 387 § 2)

4454. Action to determine boundary lines.

Scope of action.—The action involves adjudication of all adverse claims in respect to any portion of the land which it may be necessary to determine for complete settlement of the boundary lines. *Krabbenhof v. Wright*, 101 Minn. 356, 112 N. W. 421.

Second trial.—Section 4430 does not apply to an action brought under this section. *Tierney v. Gondereau*, 99 Minn. 421, 109 N. W. 821.

See note under section 4430.

[4456—]1. **Action for opening mines, quarries, etc., belonging to plurality of owners.**—That where veins, lodes or deposits of iron, iron ores, minerals or mineral ores of any kind, stone, coal, clay, sand, gravel or peat are known to, or do exist on or in lands which are shown by properly executed deeds or leases having more than one year to run of record in the county in which said lands are situated, to belong to a plurality of owners, the owner or owners of an interest equal to one-half or greater in said lands, as shown by said deeds or leases so recorded, may bring action in the district court in the county where said lands are situated, for permission to open, operate and develop said veins, lodes or deposits of iron, iron ores, minerals or mineral ores of any kind, stone, coal, clay, sand, gravel or peat that are found in or on said lands. ('07 c. 177 § 1)

Historical.—"An act providing for the opening, working and operating mines, quarries, coal, gravel, clay, sand and peat deposits, on and in lands the title of

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which appears by properly executed deeds of record to be in a plurality of persons." Approved April 15, 1907.

Section 10 repeals inconsistent acts:

[4456—]2. Same—Complaint—Hearing.—The complaint shall describe the land to be affected, and there shall be an abstract of said lands thereto attached, showing the title thereof as appears by the deeds or leases recorded in the county where said land is situated. Upon the case being brought on for hearing, the court shall determine who are the owners of the property described in the complaint, as appears by the properly executed deeds or leases thereof of record in said county in which the same is situated. ('07 c. 177 § 2)

[4456—]3. Same—Order—Bond.—If upon said hearing it appears that the complainant or complainants own one-half or more of said property, as shown by the properly executed deeds or leases of record in said county, the court shall make an order permitting and authorizing complainant or complainants, upon the filing in the office of the clerk of the court having jurisdiction of the action, of such bond, with such sureties as may be ordered and approved by the court or a judge thereof, conditioned for the faithful, complete and timely performance of all orders of the court made in the action or concerning the subject matter thereof, and for the faithful, complete and timely performance of all the provisions of this act, to enter upon, open, develop and operate said lands for the purpose of producing therefrom and from the veins, lodes and deposits therein situated, the iron, iron ore or other minerals or mineral ores of any kind, coal, clay, sand, gravel and peat, that may exist thereon or therein. ('07 c. 177 § 3)

[4456—]4. Same—Entry upon lands—Accounting—Application of receipts—Expenses.—Said complainant or complainants may thereupon, after the filing and approval of the bond provided for in section 3 [4456—3] of this act, enter upon said lands and develop the same, and produce therefrom and from the lodes, veins and deposits the iron, iron ore, minerals, mineral ores of any kind, coal, sand, clay, gravel and peat, that exist thereon or therein. A strict account shall be kept, by the party or parties operating said properties and workings, of all expenses of opening and working any and all such mines, or iron or iron ores, minerals or mineral ores of any kind, coal, or deposits of clay, sand, gravel or peat; and a true and correct account of the output of said workings in tons and of the receipts from the sale or disposal of the output. A monthly statement of such expenses and said output shall be made by said parties operating said workings and properties and filed with the clerk of said court where said action was commenced or is pending. The parties operating such properties shall be entitled to use so much of the receipts from the sales of the total output as may be necessary for the payment of the expenses and charges of opening and operating such property, and the surplus of receipts over the amount so paid out for expenses and charges of opening and operating such property shall be divided pro rata among all the owners of such property according to their interests, and the amount to which any party is entitled shall be paid to him by the parties operating such property upon demand at any time after the filing of any monthly statement as herein provided, which shows a surplus over the charges and expenses aforesaid. No part of the expenses or charges, and no claim for work or labor performed in or about the opening, operating or improvement of such property shall be a lien upon or a charge against any portion of the property or interest therein not owned by the parties operating such property, and none of the owners of any part of or interest in the property who

are not operating such property shall be liable for any of the charges or expenses of opening, operating or improving such property. ('07 c. 177 § 4)

[4456—]5. **Same—Surface rights.**—The parties operating the said veins, lodes and deposits, as herein provided, shall have the right to use the surface of the ground for placing machinery and coverings therefor, for roads, tramways, drains, water pipes, steam and electric plants, and all other appliances necessary in the operation and developing of said properties and workings, including buildings for offices and houses for man and shelter for animals engaged and employed in and by said workings, without charge from co-owners. ('07 c. 177 § 5)

[4456—]6. **Same—Rights of nonoperating owners.**—The owners of said property not engaged in operating the same shall have access to the property and workings therein at all reasonable times for the purpose of measuring up the workings and verifying thereby the accounts of operators thereof, and shall have access to the property for the purpose of removing and taking away the property delivered to them on the dump of said property as herein provided. But this right must be so exercised as not to interfere with the parties operating the property and workings on or in said property, or of any of the hoisting or working apparatus, railroads, roads, tramways or other appliances thereon, or of the workmen, servants of the operators of the property. ('07 c. 177 § 6)

[4456—]7. **Same—Abandonment of work—Rights of minority owners.**—In case the parties owning one-half or more of the property and land on which said veins, lodes or deposits of iron, iron ores, minerals or mineral ores of any kind, or coal, clay, sand, gravel or peat, are known to or do exist, fail or refuse to proceed under this chapter, or if, after commencing the work and operations hereunder, said parties abandon said work for one year, then the owners of less than a half interest of said property, lands and the title therein, as shown by properly executed deeds recorded in the county in which the same is situate, may proceed to open and work said property in the same manner and under the same restrictions as provided herein. ('07 c. 177 § 7)

[4456—]8. **No liens to attach.**—No liens created by the statutes of this state, whether mechanics or material, men or laborers, or for supplies or any other liens except those of judgment against owners of interests in said lands, shall attach to the lands on or in which operations for producing from the veins, lodes or deposits of iron, iron ores, minerals or mineral ores of all kinds, coal, clay, sand, gravel, or peat, are carried on under and in accordance with this act. ('07 c. 177 § 8)

[4456—]9. **Same—Actions apply only to output—Partition.**—Actions for operation of property in all cases where lands are held by a plurality of owners, are opened, operated and developed for the purpose of obtaining therefrom the products of the veins, lodes and deposits of iron, iron ores, minerals, mineral ores of any kind, coal, clay, sand, gravel and peat under the provisions of this chapter, shall be held to apply only to the output of said workings, and decree of partition shall be made by the courts to apply only to the division of the output of said workings of said lands, and the veins, lodes and deposits aforesaid therein. ('07 c. 177 § 9)